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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CARDIODIAGNOSTIC IMAGING INC., Plaintiff and Appellant, v. ANTHONY G. BLEDIN et al., Defendants and Respondents.	B283020 (Los Angeles County Super. Ct. No. SC122520)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Law Office of Joseph M. Kar and Joseph M. Kar for Plaintiff and Appellant.

Schiffer & Buus and Eric M. Schiffer for Defendants and Respondents.

Cardiodiagnostic Imaging Inc. (Cardio) sued Anthony G. Bledin, M.D. (Bledin), and others for causes of action arising from an alleged contract among the parties.[1] In May 2015, the court sustained a demurrer against Cardio on its cause of action for specific performance. Cardio's remaining claims for breach of contract and conversion were tried to the court.

After Cardio presented its case in chief, the court granted the defendants' motions for judgment. Cardio, the court found, failed to prove the existence of an enforceable contract, that if a contract did exist, Cardio was not a party to it, and Cardio failed to establish any of the elements of conversion. After the entry of judgment in April 2017, Cardio appealed. For the reasons discussed below, we reject Cardio's arguments and affirm the judgment.

FACTUAL BACKGROUND

From 2003 until 2011, Cardio operated a radiology facility as Titan Imaging in West Hollywood. By 2010, Cardio suffered a series of financial setbacks, including a change in Medicare law that reduced the amount that Cardio could charge for its services and a plumbing mishap that caused a "flood" of Cardio's facility, which damaged its magnetic resonance imaging (MRI) machine.[2] In October 2010, Cardio's landlord obtained a judgment against Cardio for unlawful detainer due to nonpayment of rent. The landlord, however, permitted Cardio to remain in the premises on a month-to-month basis to allow it time to find "a buyer."

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[1] In addition to Bledin, the defendants are Anthony Bledin, M.D., Inc., and Virtual Radiology, LLC. (We refer to them collectively as the defendants.)

[2] The plumbing problem and resulting flood are described in *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exchange* (2012) 212 Cal.App.4th 69, 71–72.

In early 2011, Cardio's owners and its president, Jason Kay, met with Bledin to discuss a possible purchase of Cardio's assets. By May 2011, Bledin had learned of liens encumbering Cardio's equipment, and for that reason, decided not to enter into an agreement with Cardio. He was, however, willing to discuss entering into an agreement with Kay and Joshua Falkner, an employee of Cardio.

The discussions produced a series of emails and letters among Kay, Falkner, and Bledin regarding the terms of a potential agreement. These included a June 5, 2011 email from Bledin to Kay, attaching an unsigned "revised letter of intent." The letter, Bledin stated, "represents our current agreement and needs to [be] show[n] and agreed to by the Land[l]ord before we can proceed." Cardio alleged that the letter, which we refer to as the June 5 LOI, sets forth the terms of the contract between the parties. It provides:

"Below is A[.] Bledin['s] intent regarding the Business located on 9201 West Sunset Blvd., West Hollywood 90069.

1. $150,000 is offered for a 70% interest in the business (New Corp[.)] transferred at closing, which includes a working, lien free MRI Unit (Philips Intera 1.5T unit), an x ray unit and miscellaneous office equipment and furniture with no debt owed to any parties including the Landlord. The money will be released at closing when the MRI is working and all the liens are released.
2. Money would be loaned to . . . Kay to do the MRI repair provide[d] the loan could be adequately collateralized as assessed [by] A[.] Bledin.
3. All capital cost[s] (including the $150,000 "purchase price"), and any operating capital needed will become part of New Corp. expenses and debt. New Corp. will amortize this capital cost at 7% per annum over 4 year[s] when calculating expenses.

4. All income generated at 9201 Sunset Blvd. will be billed through a Medical corporation (Owned by Dr. Bledin) as New Corp. cannot provide medi[c]al service as New Corp[.] is not a Physician and cannot practice medicine. This medical Corporation wi[ll] have a Management agreement with New Corp[.] for the use of the New Corp[.] facility at 9201 Sunset Blvd.
5. New Corp[.] wi[ll] be exclusively managed by the majority shareholder. (A[.] Bledin or A[.] Bledin designee).
6. Property Lease will be transferred to (New Corp[.]) at closing with terms acceptable to A[.] Bledin[.]
7. 30% ownership by [Kay] and [Falkner] depends on successful[] employment at New Corp. Successful employment includes that income exce[ed]s expense[s] by $15,000 monthly after one year of New Corp. having an operational CT, MRI and X rays unit. Should successful employment fail—the company will be valued by . . . three independent appraisal[s] (one selected by you[,] one selected by me and a third selected by us jointly) to determine the buy out and value.
8. Salary to be divided between [Kay] and [Falkner] depend[e]nt on performance. Combined range of total salary to [Kay] and [Falkner] is 50K to 300K per annum depend[e]nt on performance determined by New Corp[.]
9. Profit will be distributed quarterly according to ownership interest only if in the preceding 3 successive months the income exceeds the expenses. 80% of the 'profit' will be distributed, with 20% held in reserve."

Cardio refers to paragraph 7 of this letter as the "appraisal rights" provision or agreement.

On June 6, 2011, Kay responded to the June 5 LOI by stating that he had made unspecified "changes on . . . 1 and 7." Kay added: "We are doing an asset sale where as New Corp[.] will be the owner. I[']m looking at this deal as we are entering in[to] it together, as we are." Bledin understood this to mean that they had not yet reached an agreement.

Later that day, Kay emailed the landlord, stating that he and Bledin "are close to finishing off an agreement. One of the conditions of the anticipated agreement," Kay explained, is that he must "deliver the equipment free and clear of any liens." To that end, Kay suggested that the landlord "foreclose on the lease and sell the equipment."

The landlord's manager, Joseph Mani, responded on June 7, 2011, stating that he "can't keep waiting" and needed to get the premises in a leasable condition. Mani added that he was "going to take possession of the space and rent it," and that he would tell Cardio's "lender . . . to make arrangements to pick up their stuff."

On the same day, Kay emailed Bledin with the subject line: "new proposal." He stated: "I just want to touch base on what that agreement is. Landlord forcloses [*sic*] on the lease of cardio. Sells the equipment to you at fair market value. We get him to re-lease the place to our new corp at previous terms (may take additional funds to secure old lease terms). You then put up capital for new corp to reopen with [MRI, CT], ultrasound and x-ray, which will be repaid as loan liability by new corp for four years from the day we are up and running with all modalities. [Falkner] and I run the marketing efforts and [split] the shares 65/35. Is this agreeable[?] [I]n essence you are getting 65% of a company for putting up the capital . . . business plus interest. This is my proposal."

On June 16, 2011, Bledin sent an email to Kay attaching his "letter of intent . . . as of [June] 16[,] 2011 information." In the attached letter, Bledin expressed his "intent . . . regarding the

business," and stated: "I am evaluating the viab[ility] of the project and will commit to it once I have completed my due diligence and confirmed the project is viable, with the terms described below." In contrast to the 65 percent interest Kay proposed for Bledin, Bledin reiterated his requirement that he receive a 70 percent interest. When compared with the June 5 LOI, Bledin's letter omitted the $150,000 purchase price, omitted a provision for a loan to Kay for "the MRI repair," added a requirement that the existing MRI be replaced by a new MRI machine, added a provision for up to $500,000 in "funding" by Bledin to be "secured by the assets of New Corp.," and added a provision requiring the payment of debts prior to distributing profits.

On July 5, 2011, Bledin emailed Kay a letter described as an "agreement for the Business located on 9201 West Sunset Blvd., West Hollywood." Except for replacing "New Corp." with "Sunset Radiology Inc[.]," the terms are substantially identical to the terms in Bledin's June 16 letter.

On August 3, 2011, Bledin sent the July 5 letter to Kay attached to an email stating: "Current agreement attached[. ¶] But Will Require Some Modification as we are not going the GE route."

On August 16, 2011, Kay emailed Bledin, stating that he and Falkner had some "clarifications." Attached to the email is a copy of Bledin's July 5 letter of intent with Kay's comments inserted after particular terms. Regarding Bledin's interest in the new company, he added: "70% of company was not contingent on lien free MRI. The $150,000 purchase price was what was contingent on lien free MRI. If the MRI for some reason needs to be removed, the 70-30 split is still enforced. The 30% was based on lease terms, [m]arketing, equipment, and opportunity." Regarding Bledin's obligation to provide up to $500,000 in funding, Kay added: "Not sure why there is a cap of 500K. Do any terms change otherwise

if 500K is eclipsed?" Kay further noted that the 30% interest in the company would be held by Falkner and such interest would "only be retracted if [Kay and Falkner] fail to bring in the business to sustain overhead." Kay also sought "clarification" regarding his and Falkner's compensation and "propose[d] an hourly wage" and "a bonus structure for number of scans" they brought in. In his accompanying email, Kay stated: "Once settled this should be bound by signatures."

After receiving this email, Bledin understood that he did not have an agreement "because they [kept] on changing everything."

On August 25, 2011, Bledin emailed Kay and Falkner a document he described as "the concept of how we should operate Sunset [R]adiology." The email included a revised letter of intent, which contained most of the terms set forth in the July 5 letter of intent and did not incorporate the language Kay proposed in his August 16 email. It did alter the provision regarding Bledin's funding for the venture by reducing funding from a maximum of $500,000 to a maximum of $170,000, and instead of replacing the MRI, the new company would repair the existing MRI machine. The revision also added a requirement that Kay "assign all assets, if any, but not liabilities, of" the MRI machine and other equipment to the new company.

The following day, Kay responded, stating: "Hey Anthony, don't have this written up yet. I think we should talk about a couple points." According to Bledin, he did not believe he had an agreement.

By the time these August 2011 emails were exchanged, Cardio owed the landlord approximately $128,000. On August 18, 2011, the landlord entered into a lease for the premises with Virtual Radiology, LLC (Virtual Radiology), an entity owned by Bledin, and which does business as Sunset Radiology. The five-year lease term began on September 1, 2011. Cardio's MRI machine remained

in the premises and the landlord took the position that Cardio had abandoned it.

Thereafter, Bledin arranged to repair the MRI machine and Kay and Falkner performed work for Bledin (or entities Bledin owned) as independent contractors or employees. Their working relationships with Bledin (or his entities) terminated in 2013.

PROCEDURAL HISTORY

On May 7, 2014, Cardio and one of its owners filed a complaint against the defendants alleging causes of action styled as specific performance, breach of contract, conversion, financial equitable lien, and accounting/constructive trust. The terms of the alleged contract are set forth in the June 5 LOI. In its specific performance cause of action, Cardio sought an order compelling defendants to comply with the appraisal rights provision of the June 5 LOI.

In March 2015, the court sustained defendants' demurrers to Cardio's causes of action for specific performance, equitable lien, and constructive trust on the ground that such claims "are not causes of action but remedies." Cardio was granted leave to amend these claims "as forms of relief" in an amended complaint. The court overruled demurrers to Cardio's causes of action for breach of contract and conversion.

Cardio did not file an amended complaint and the case proceeded to trial on the two remaining causes of action: breach of contract and conversion.

In June 2014 and January 2015, Cardio filed motions to compel arbitration based upon the appraisal rights provision in the June 5 LOI. The court denied each motion.

The case was tried to the court in November 2016. On November 15, 2016, after Cardio rested on its case in chief with respect to the bifurcated issue of liability and before the

presentation of the defense case, the court granted the defendants' motion for judgment (Code Civ. Proc., § 631.8) as to Cardio's cause of action for breach of contract.[3] After two more days of trial, the court granted the defendants' motion for judgment as to the conversion cause of action.

In April 2017, the court issued a statement of decision. Regarding the breach of contract cause of action, the court stated that Cardio "failed to meet its burden of proving the required element of a contract because the evidence established that the June 5, 2011 proposal denominated as a letter of intent sued upon by [Cardio] was not an enforceable contract." Instead, the court added, "[T]here merely was a series of discussions, negotiations, proposals, and rejections." Moreover, "the evidence established that [Cardio] was the wrong party and lacked standing to bring and/or prosecute this cause of action because it was not a party to, a third-party beneficiary of, or even mentioned in the June 5, 2011 proposal . . . or any of the other proposals denominated as letters of intent." Lastly, the proposals "contained uncertain terms

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[3] On appeal, defendants refer to this motion as a motion for nonsuit. A nonsuit is a motion made in a jury trial (Code Civ. Proc., § 581c, subd. (a)) and "presents a question of law: whether the evidence offered in support of the plaintiffs' case could justify a judgment in the plaintiffs' favor." (*Lussier v. San Lorenzo Valley Water Dist.* (1988) 206 Cal.App.3d 92, 98; see generally 7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 406, p. 478.) The trial in this case, however, was before the court, and as the court recognized, the defendants' motion was for judgment under Code of Civil Procedure section 631.8. Under that statute, the "court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party." (Code Civ. Proc., § 631.8, subd. (a); see *Lingenfelter v. County of Fresno* (2007) 154 Cal.App.4th 198, 204 [discussing differences between nonsuit and motion for judgment].)

and conditions, including but not limited to the phrase '[s]hould successful employment fail[,'] and therefore did not constitute an enforceable contract between or among the parties."

Regarding the conversion cause of action, the court stated that Cardio failed to satisfy its burden of proving the elements of: (1) ownership or right to possession of the MRI machine; (2) a wrongful taking; or (3) damages. The court found that Cardio failed to establish ownership or a right to possession because it had "abandoned" the equipment. The abandonment finding was expressly based on the facts, among others, that Cardio "was in debt to the landlord . . . in the approximate amount of $128,000, it had been legally evicted by [t]he Landlord, [and] it would have been expensive to move the MRI that was bolted to the floor."

Regarding the wrongful taking element, the court found that "the evidence established that [d]efendants did not engage in any taking, wrongful or otherwise, from [Cardio]. The evidence established that [d]efendants obtained the MRI and other subject equipment from" the landlord.

Cardio failed to meet its burden of proving damages for conversion, the court found, because, among other reasons, Cardio "did not present any evidence of the fair market value of the subject MRI or any of the other subject equipment." Although Cardio presented testimony of the "book value" of the equipment, that value included the value of Cardio's business, which "was irrelevant."

The court entered judgment on April 18, 2017. Cardio filed a notice of appeal on June 7, 2017.

DISCUSSION

I. Procedural and Evidentiary Issues

A. *Purported Exclusion of Custodians* of *Records*

Cardio contends that the court erred in excluding testimony from a custodian of records from "Blue Shield." It refers us to the court's statement, "I'm excluding the custodians," made during a pretrial conference. Cardio, however, has taken the court's statement out of context.

The statement was made during a review of the parties' witness lists the court undertook to "get a sense of how long [the trial is] going to take." Cardio's witness list included 30 names, including five described as custodians of records for various entities, one of which was Blue Shield. Cardio estimated 12 minutes of time for each of four of the five custodians, including the Blue Shield custodian, and 30 minutes for the fifth. The court asked Cardio's counsel about each name on the witness list, and crossed off the list the names of individuals counsel indicated would not be testifying. When the court reached the custodians of records on the list, Cardio's counsel stated that each was placed on the list "prophylactically," and indicated that he had "the declaration" needed to introduce the business records without the custodian.[4] The court crossed five other names off the list. After they discussed the last name on the list, the court stated: "Let me see how many I got on this list. Give me a moment here [¶] . . . [¶] . . . I'm

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[4] Counsel referred to "the declaration under [Evidence Code section] 1570." There is no section 1570 in the Evidence Code. Counsel was probably referring to Evidence Code section 1562, which provides for a presumption of foundational facts concerning business records when the custodian of records provides an affidavit complying with Evidence Code section 1561.

excluding the custodians. You have 20 names." The court then proceeded to review defendants' witness list.

In this context—in which the court is discussing trial time estimates, not evidentiary issues, and counsel indicated that the records custodians would probably not need to personally appear in court—we understand the court's statement, "I'm excluding the custodians" not as a ruling excluding such custodians from testifying, but rather as the court's way of saying: "For purposes of estimating the time for trial, I'm not counting the five custodians." When viewed in this context, Cardio's argument has no merit.

B. *Bifurcation*

On the first day of trial, defendants moved to bifurcate the issue of whether there was an enforceable contract in order to "save the court a lot of time." The court denied the motion.

On the second day, the court told Cardio's counsel: "I'm going to ask you to defer on any witness who may be coming in here solely for damages until I've heard all the liability . . . witnesses." Counsel responded, "Okay." The court explained that it wanted "to see that [Cardio] can establish the liability" before it hears from Cardio's "experts on the numbers." Counsel stated, "I know." On the third day, the court was more clear: "[F]or the record, the court has bifurcated this trial, such that the issue is whether or not there was a contract between the plaintiff and defendants in this case."

Cardio contends that the court erred by "forcing [it] to try the case bifurcated after denying that motion" and "forcing" its experts to testify at the end of the trial. As Cardio acknowledges, we review the court's ruling for an abuse of discretion. (See *Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 353.)

Trial courts have discretion to "regulate the order of proof" at trial (Evid. Code, § 320), and "in furtherance of convenience"

or when "conducive to expedition and economy," to order the trial of separate issues (Code Civ. Proc., § 1048). The court may also, "on its own motion" and "at any time," order "that the trial of any issue . . . shall precede the trial of any other issue." (Code Civ. Proc., § 598.) The trial court has the further, "inherent authority to change its decision at any time prior to the entry of judgment." (*Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156.) The fact that the court denied the defendants' motion to bifurcate did not, therefore, preclude the court from subsequently bifurcating the issue regarding the existence of the contract from other issues. Cardio's argument that its experts were "force[d]" to testify at the end of the trial fails to establish the requisite abuse of discretion.

C. *Exclusion of an Email as Settlement Discussions*

Four days after Cardio served Bledin with the complaint and summons in this action, Bledin sent an email to Jimmy Mayer. According to Bledin, Mayer was a "facilitator" for Cardio and one who "would help us negotiate and get to a settlement" "if there was ever a problem."

Bledin's email includes the subject line: "Please call [me] to discuss options. As yet no response." In the body of the email, Bledin told Mayer: "It['s] been . . . about 2 years since we [i]nstalled the CT . . . and I would like to update you. We are still [r]unning in the [r]ed, but trying to get . . . a positive cash flow—not easy. Expenses are still too [h]igh and [i]ncome is too little but we are still trying. [¶] Please call [me] to discuss options."

The court sustained defendants' objection to the email on the ground that it was evidence of inadmissible settlement discussions. Cardio contends this was error.

Under Evidence Code section 1152, subdivision (a), "statements made in negotiation" of a compromise of a claim of loss are "inadmissible to prove his or her liability for the loss." Courts

will apply this rule in light of the "strong public policy favoring settlement negotiations and the necessity of candor in conducting them." (*C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1, 13.) It encompasses not only offers to compromise or settle disputes, but statements that are " 'connected' " to settlement efforts. (*Caira v. Offner* (2005) 126 Cal.App.4th 12, 36.)

We review the court's ruling for an abuse of discretion. (*Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1476.) Cardio has not established such an abuse. At the time Bledin sent the email, he had recently been served with the complaint in this action and he understood that Mayer was someone who would help negotiate a settlement. The court could reasonably have concluded that Bledin, by describing the radiology business as unprofitable, may have been attempting to lower Cardio's perception of the settlement value of the litigation. The court could have thus construed the email as Bledin's effort to frame or influence negotiations concerning settlement of the dispute. (See, e.g., *id.* at pp. 1477-1478.) As such, the court could reasonably conclude that the email was connected to settlement discussions and, therefore, its exclusion was not an abuse of discretion.

Moreover, Cardio has not shown how the exclusion of the evidence, if erroneous, constituted "a 'miscarriage of justice'—that is, that a different result would have been probable if the error had not occurred." (*Zhou v. Unisource Worldwide*, *supra*, 157 Cal.App.4th at p. 1480, quoting Evid. Code, § 354.)

II. Demurrer to Specific Performance Cause of Action

Cardio alleged a cause of action for specific performance of the appraisal provision in the June 5 LOI.[5] The court sustained the defendants' demurrer to the cause of action on the ground that specific performance is a remedy, not a cause of action. The court gave Cardio leave to "re-plead" to seek specific performance relief "as part of a First Amended Complaint." Cardio elected to stand on its original pleading.

Cardio cites to cases supporting its assertion that a party may state a cause of action for specific performance in the form it was pleaded in this case. (See, e.g., *Wait v. Kern River Mining etc. Co.* (1909) 157 Cal. 16, 24; *Armstrong v. Sacramento V. R. Co.* (1921) 52 Cal.App. 110, 117; but see 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 784, p. 203 ["Specific performance is an alternative remedy; the cause of action is for breach of contract."].)

We need not decide whether a cause of action for specific performance of a contract, pleaded separately from a cause of action for breach of contract, can be alleged or, if so, whether Cardio had properly alleged such a cause of action in this case. Cardio's cause of action (if it is one) depended upon the existence of an underlying contract. Cardio has not, however, presented a cogent argument challenging the court's findings that (1) no contract existed and (2) if one did exist, Cardio was not a party to it. Indeed, as our factual summary shows, there is ample evidence in the record to support the court's findings that Bledin and Kay engaged in "a series of discussions, negotiations, proposals, and rejections," but

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[5] In the specific performance cause of action, Cardio sought an order compelling defendants "to comply with the appraisal rights agreed to in the [June 5 LOI] or for [the] [c]ourt to enter default against [d]efendants in respect thereto."

never established an enforceable contract. Moreover, the June 5 LOI makes no mention of Cardio, and to the extent that document could be construed as a contract with anyone, it suggests an agreement among Bledin, Kay, and Falkner only. This is consistent with Bledin's testimony that, after learning of Cardio's liens against its equipment, he was not willing to enter into a contract with Cardio.

Because Cardio has failed to establish that the court erred in finding that Cardio had no contract with defendants, Cardio could not have obtained specific performance of such a contract even if its specific performance cause of action remained in the complaint. Therefore, even if the court erred in sustaining a demurrer to that cause of action, the error was harmless.

III. Denial of Motions to Compel Arbitration

Cardio twice moved the trial court to compel an arbitration based upon the appraisal provision in the June 5 LOI. The court denied both motions. Cardio contends the court erred in making these rulings.

Defendants contend that we should not consider Cardio's arguments because it did not appeal from the denial of the motions. We agree. As defendants assert, the denial of a motion to compel arbitration is directly appealable (Code Civ. Proc., § 1294, subd. (a)), and the failure to timely appeal from that ruling precludes appellate review.[6] (Cal. Rules of Court, rule 8.104(b).) The court's ruling on the first motion was unequivocally denied, Cardio did not appeal from that order, and the time for doing so has expired.

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[6] Although defendants raised this point in their respondents' brief, Cardio did not respond to it in its reply brief.

We do not, therefore, have jurisdiction to review it. (See *Estate of Hanley* (1943) 23 Cal.2d 120, 123.)

The court denied the second motion on the grounds that (1) it was "premature," and (2) Cardio failed to comply with Code of Civil Procedure section 1008. Although the court's denial was "without prejudice," and did not, thereby, "foreclos[e] the possibility of arbitration altogether, [it] did have the effect of staying any arbitration until another issue—whether "successful employment fail[ed]"—was resolved. (See *Sanders v. Kinko's Inc.* (2002) 99 Cal.App.4th 1106, 1109-1110; accord, *Century 21 Chamberlain & Associates v. Haberman* (2009) 173 Cal.App.4th 1, 11, fn. 5 [although order continuing hearing on petition to compel arbitration was not appealable, order denying motion without prejudice would have been appealable].) The order was, therefore, appealable. (See generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 141, pp. 214–215.) Again, its failure to timely appeal from the challenged order deprives this court of jurisdiction to consider it.

Moreover, even if the challenged rulings were properly before us, we would affirm the rulings because, as stated in the preceding part, the court did not err in finding that the alleged contract upon which the motions to compel arbitration were based was never formed, and if a contract was formed, Cardio was not a party to it.

IV. Conversion and the Court's Abandonment Finding

In its statement of decision, the court found that Cardio failed to prove any of the three elements of conversion: (1) the plaintiff owned or had a right to possession of the property; (2) the defendants converted the property by a wrongful act or disposition of property rights; and (3) the plaintiff suffered damages. (See *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) Cardio failed to satisfy the first element, the court explained, because it had "abandoned

all of [the subject] equipment." The court's determination of abandonment was based in part on its finding that Cardio "was in debt to the landlord . . . in the approximate amount of $128,000."

Cardio objected to the $128,000 debt finding and contends that it is "entirely inaccurate" and unsupported by "any evidence or testimony." We disagree. Mani, the landlord's manager, stated in a written declaration that in August 2011, Cardio owed $128,000 in unpaid rent and had surrendered possession of the premises to the landlord. At trial, Mani reaffirmed that statement because "at that time, August 2011, they hadn't paid the rent." Although he further testified that, *at the time of trial*, the debt had "been repaid," he also confirmed, upon questioning by the court, that *in August 2011*, the amount of the unpaid debt "was in excess of $120,000."

The court's finding that Cardio "was in debt to the landlord . . . in the approximate amount of $128,000" is arguably unclear because it does not say *when* it owed that debt. The finding, however, is made with respect to the date of the alleged surrender or abandonment of the premises, which Mani stated occurred in August 2011. Therefore, Mani's testimony that the debt had been repaid as of the time of trial does not conflict with the court's finding: Even if Cardio eventually paid its debt, there is substantial evidence that it owed $128,000 at the relevant time in August 2011. There is no error.

Cardio further contends that the court "did not follow the law on 'abandonment' " (boldface omitted) and there was "no evidence of any abandonment" of the MRI machine. We need not determine whether the court's abandonment finding or analysis was erroneous. Even if Cardio is correct, Cardio does not challenge the court's finding as to the third element of conversion: that Cardio failed to prove that it suffered any damage by the alleged conversion. Because that finding is not disputed, Cardio cannot

show that it would have obtained a more favorable result if any error as to the abandonment finding had not occurred. Any error is therefore harmless.

DISPOSITION

The judgment is affirmed. Defendants Anthony Bledin, Anthony Bledin, M.D., Inc., and Virtual Radiology, LLC, are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.